

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL MCGORE, #142739,

Plaintiff,

v.

Civil Case No. 17-13320
Honorable Linda V. Parker

HAZEL PARK POLICE OFFICER
KENNETH SHENK, DETROIT POLICE
COMMISSIONERS AND CITY MANAGERS,
and MAYOR OF DETROIT,

Defendants.

**OPINION AND ORDER DENYING LEAVE TO PROCEED WITHOUT
PREPAYMENT OF FEES AND DISMISSING COMPLAINT WITHOUT
PREJUDICE**

Michigan prisoner Darryl McGore (“Plaintiff”) has filed a pro se complaint, as well as an application to proceed without prepayment of the filing fee for this action pursuant to 28 U.S.C. § 1915(a)(1). Plaintiff’s hand-written complaint, which is difficult to read and follow, appears to concern Hazel Park Police Officer Kenneth Shenk’s testimony in criminal proceedings after Plaintiff was arrested for carrying a .38 caliber revolver. Having reviewed the matter, the Court is denying Plaintiff’s application to proceed without prepayment of fees or costs and is dismissing the complaint without prejudice pursuant to 28 U.S.C. § 1915(g).

Under the Prison Litigation Reform Act of 1996 (“PLRA”), a prisoner may be precluded from proceeding without prepayment of the filing fee in a civil action under certain circumstances. The statute provides, in relevant part:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). At least three of Plaintiff’s prior complaints have been dismissed as frivolous or for failure to state a claim. *See, e.g.,* Op. Den’g Leave to Proceed in Forma Pauperis – Three Strikes, *McGore v. Unknown Gooch*, No. 1:11-cv-340, at 3 (W.D. Mich. Apr. 14, 2011) (collecting cases), ECF No. 3. Plaintiff also has been denied leave to proceed in forma pauperis on multiple occasions due to having “three strikes.” *Id.* (collecting cases). Plaintiff filed some of these dismissed cases against at least one of the defendants he names in his current complaint. *See McGore v. Shenk*, No. 11-12133 (E.D. Mich. filed May 16, 2011); *McGore v. Shenk*, No. 11-12969 (E.D. Mich. filed July 11, 2011). Although the dismissal of some of Plaintiff’s prior lawsuits were entered before the PLRA’s enactment, they nevertheless count as strikes. *Wilson v. Yaklich*, 148 F.3d 596, 604 (6th Cir. 1998). Plaintiff has not demonstrated that he falls within the exception to the “three strikes” rule.

Accordingly,

IT IS ORDERED that Plaintiff's application to proceed without prepayment of the fees and costs for this action is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that Plaintiff's Motion for Newly Discovered Evidence is **DENIED AS MOOT**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: November 16, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, November 16, 2017, by electronic and/or U.S. First Class mail.

s/ R. Lory
Case Manager